

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ARCHER CAPITAL MASTER FUND, L.P., *et al.*,

Plaintiffs,

vs.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:16-cv-05471-AKH

ATLAS MASTER FUND, LTD., *et al.*,

Plaintiffs,

vs.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants.

Civil Action No.: 1:16-cv-05475-AKH

(captions continued on following page)

JOINT MOTION FOR DISMISSAL WITH PREJUDICE PURSUANT TO RULE 41(a)(2)

FIR TREE CAPITAL OPPORTUNITY
MASTER FUND, L.P., *et al.*

Plaintiff,

vs.

AMERICAN REALTY CAPITAL
PROPERTIES, INC., *et al.*,

Defendants,

Civil Action No.: 1:17-cv-04975-AKH

COHEN & STEERS INSTITUTIONAL
REALTY SHARES, INC., *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC. *et al.*,

Defendants.

Civil Action No.: 1:18-cv-06770-AKH

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, Defendant American Realty Capital Properties, Inc., n/k/a VEREIT, Inc. (“ARCP”), and Plaintiffs in *Archer Capital Master Fund, L.P., et al. v. American Realty Capital Properties, Inc., et al.*, Civil Action No. 1:16-cv-05471-AKH, *Atlas Master Fund, Ltd., et al. v. American Realty Capital Properties, Inc., et al.*, Civil Action No. 1:16-cv-05475-AKH, *Fir Tree Capital Opportunity Master Fund, L.P., et al. v. American Realty Capital Properties, Inc., et al.*, Civil Action No. 1:17-cv-04975-AKH, and *Cohen & Steers Institutional Realty Shares, Inc., et al. v. American Realty Capital Properties, Inc., et al.*, Civil Action No. 1:18-cv-06770-AKH (collectively, “Plaintiffs” and with ARCP, the “Moving Parties”), jointly move the Court to dismiss with prejudice all claims filed by Plaintiffs against all defendants (“Defendants”) in the above-captioned actions (“Actions”). In support of this motion, the Moving Parties state as follows:

Plaintiffs have agreed to a release and dismissal of all claims filed in the Actions against all Defendants. Because the Moving Parties are seeking dismissal of all of Plaintiffs’ claims against all Defendants with prejudice, there is no risk of prejudice to any Defendant. Accordingly, dismissal is warranted. *See, e.g., Commercial Recovery Corp. v. Bilateral Credit Corp., LLC*, 2013 WL 8350184, at *5 (S.D.N.Y. Dec. 19, 2013) (“Although voluntary dismissal without prejudice is not a matter of right, courts have generally subjected motions for voluntary dismissal *with* prejudice to far less scrutiny, chiefly because such a dismissal constitutes a final judgment with the preclusive effect of *res judicata*. . . .” (emphasis in original) (internal quotation marks omitted)).

WHEREFORE, the Moving Parties respectfully request that this Court enter an order dismissing all claims in the Actions with prejudice.

Dated: November 5, 2018

**MILBANK, TWEED, HADLEY &
McCLOYLLP**

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